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APPELLANT PRO SE:

MICHAEL A. KELLEY
Gary, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL A. KELLEY,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 45A03-0603-CV-130
)	
THOMAS E. MULLAN)	
and MICHAEL E. HALPIN,)	
)	
Appellees-Respondents.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Julie N. Cantrell, Judge
Cause No. 45D09-0603-SC-769

April 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Michael A. Kelley appeals the trial court's dismissal of the small claims action that he filed against appellees-respondents Thomas E. Mullan and Michael E. Halpin (collectively, the appellees). Specifically, Kelley argues that the trial court erroneously dismissed his action. Concluding that the trial court did not err by dismissing Kelley's action, we affirm the judgment of the trial court.

FACTS

Two related actions stem from events that followed the death of Kelley's stepfather, Bernard P. Mullan. Following Bernard's death, Thomas was named the administrator of Bernard's estate (the Estate). Halpin is the Estate's legal counsel. Probate was initiated for the Estate under lower cause number 45C01-0505-ES-136 (ES-136), and Kelley argued, among other things, that the appellees had "intentionally or negligently allowed his personal property to be taken." Appellant's App. p. A18. On September 14, 2005, Kelley filed a motion to attach a lien to the Estate. The probate court denied the motion on January 19, 2006, finding that Kelley had "failed to state a claim upon which relief can be granted." Id. at A14.

On February 21, 2006, Kelley filed a claim with the small claims court (trial court) under lower cause number 45D09-0603-SC-769 (SC-769), alleging that the appellees negligently or intentionally lost or destroyed approximately \$5,000 of Kelley's personal property that had been stored inside Bernard's home. On March 2, 2006, the trial court dismissed SC-769, concluding that it lacked subject matter jurisdiction and that adjudicating the case would violate the doctrine of res judicata.

On March 13, 2006, Kelley filed a notice of appeal.¹ On April 3, 2006, he filed a motion to consolidate the ES-136 and SC-769 appeals. Our motions panel issued an order on June 6, 2006, directing Kelley to show cause as to why we should not dismiss his appeal. After review, the motions panel denied Kelley's motion to consolidate, dismissed the ES-136 appeal because it was untimely, and ordered that the SC-769 appeal proceed. Because Kelley's brief and appendix contained references to both cases, the motions panel ordered that all documents and arguments related to ES-136 be stricken. In addition, it granted the appellees thirty days to respond to Kelley's arguments regarding SC-769; however, no response was filed.

DISCUSSION AND DECISION

When, as here, an appellee fails to submit a brief, we do not undertake the burden of developing arguments for that party and we apply a less stringent standard of review. Murfitt v. Murfitt, 809 N.E.2d 332 (Ind. Ct. App. 2004). Specifically, we will reverse if the appellant establishes prima facie error, which is an error at first sight. Id.

The doctrine of res judicata prevents repetitious litigation of disputes that are essentially the same. Dawson v. Estate of Ott, 796 N.E.2d 1190 (Ind. Ct. App. 2003). It consists of two distinct components—claim preclusion and issue preclusion. Id. Issue preclusion “bars the subsequent relitigation of the same fact or issue where that fact or issue was necessarily adjudicated in a former suit and the same fact or issue is presented in a

¹ It appears that Kelley only filed one notice of appeal but actually intended to appeal the adverse outcomes in both ES-136 and SC-769.

subsequent action.” Brown v. Jones, 804 N.E.2d 1197, 1203 (Ind. Ct. App. 2004). Where issue preclusion applies, the previous judgment is conclusive with respect to those issues actually litigated and decided. Id.

The fate of Kelley’s personal property remains unknown and, even after perusing the record, numerous possibilities abound. For example, it is unclear whether the appellees inventoried the property as part of the Estate, converted the property and personally kept the proceeds, sold the property and kept the proceeds in the Estate, or, instead, were not negligent and properly considered the property to be part of the Estate. In light of the probate court litigation concerning the Estate, that court seems to be in the best position to litigate Kelley’s personal property claims.

Furthermore, Kelley raised the personal property issue in the probate court.² The gravamen of the trial court’s decision in the small claims action was that “this claim has already been litigated in probate court, it is not permissible for [Kelley] to attempt to litigate this issue again in a different court; a party cannot get ‘two bites at the same apple.’” Appellant’s App. p. A18 (citing Dawson, 796 N.E.2d at 1190). Therefore, the issue preclusion prong of the res judicata doctrine bars a subsequent court from relitigating the same fact or issue that was adjudicated in a former action. Brown, 804 N.E.2d at 1203.

In sum, we cannot find that the trial court’s conclusion that Kelley “cannot get two bites at the same apple” was erroneous, considering that the trial court found that Kelley had “assert[ed] the same set of facts, and even us[ed] some of the same filings from the probate

² The current status of Kelley’s personal property claim in the probate court remains unclear.

matter.” Appellant’s App. p. A18. On appeal, the burden is on Kelley to provide us with a record that convinces us that the trial court erred by dismissing SC-769, and Kelley has not carried that burden.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.